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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, Plaintiff, - v.- UNITED STATES DEPARTMENT OF DEFENSE, Defendant.	**ECF CASE** SUPPLEMENTAL DECLARATION OF KAREN L. HECKER 05 Civ. 3941 (JSR)

KAREN L. HECKER hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Associate Deputy General Counsel in the Office of General Counsel of the United States Department of Defense ("DOD"). In that capacity, I am responsible for, among other things, overseeing litigation involving the DOD. I make this supplemental declaration to address the questions Associated Press ("AP") raised in its summary judgment opposition papers concerning pages possibly missing from DOD's production of responsive documents, and to describe the steps DOD has taken to locate any other responsive documents that were inadvertently not produced.

The Exhibits Referred to in the Six Transcript Pages Identified by AP

2. In its summary judgment opposition papers, AP identifies six transcript pages that refer to exhibits that AP claims were called for by AP's FOIA request but were not produced. See Declaration of Paisley Dodds, dated July 13, 2005, ¶ 21 and Exh. G. Those pages are: AP 01167, AP 01188, AP 01315, AP 02722, AP 03601, and AP 03713.

3. In response to AP's identification of the foregoing pages, I reviewed the exhibits referred to on those transcript pages to determine whether they were in fact missing from DOD's production of responsive documents. Some of the exhibits referred to were not responsive to AP's request and were not produced for that reason. Others were responsive and were inadvertently not produced. The transcript pages identified by AP and the exhibits referred to on those pages are discussed in detail in the following paragraphs.

4. Page AP 01167. Exhibit D-b was the detainee's statement and it was produced as pages AP 01169-1170. Exhibit D-c was the detainee's written request to the Taliban that it provide the CSRT with the detainee's request for his "Taliban resignation" documents. On its face, this exhibit did not appear responsive to AP's request. However, the transcript reveals that the Tribunal President had received a translated copy of the detainee's request and that the President told the detainee that the documents were not relevant. The only way the Tribunal President could have received a copy of the detainee's request for his "Taliban resignation" documents was through the detainee's Personal Representative. It therefore appears that the detainee gave the written request to his Personal Representative. Assuming that was the case, Exhibit D-c was responsive to AP's request and was inadvertently not produced. I understand that it has since been provided to AP as pages AP 01170A and 01170B. Exhibit D-a, also referred to on that page, is a non-responsive form filled out by the personal representative.

5. Pages AP 01188, AP 01315, AP 3713. Exhibits D-b referred to on these pages were inadvertently not produced. I understand that they have since been provided to AP as pages AP 01191A and AP 01191B, AP 01317A-E, and AP 03716A and AP 03716B.

6. Page AP 02722. Exhibit D-b referred to on this page is a polygraph test result that the detainee asked his personal representative to procure from his investigative file. The detainee never saw the test result. Consequently, the exhibit is not a "written statement provided to any CSRT by any detainee" or a document "provided by any detainee . . . to [his] assigned personal representative," and is therefore not responsive to AP's FOIA request. It therefore was not produced.

7. Page AP 03601. Exhibit D-b is a statement by a detainee serving as a witness for the detainee whose CSRT is at AP 3582-3606. It was previously produced as page AP 3607. Exhibit D-c, an internet article about elections in Afghanistan, was not produced because it is not responsive to AP's FOIA request. Exhibit D-e, letters to the detainee from his family, were not produced because they are not responsive to AP's FOIA request. As the transcript reveals at page AP 03594, the letters were not provided by the detainee to his personal representative, but were submitted by the detainee directly to the CSRT. Accordingly, the letters are not responsive to AP's FOIA request.

DOD's Second Search of the CSRT Files

8. DOD took another step to address AP's concerns about potentially responsive documents not having been produced. Along with another attorney in the DOD General Counsel's Office, I conducted a completely new search of the 558 Combatant Status Review Tribunal (CSRT) files maintained by the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) at OARDEC headquarters in Arlington, Virginia. Between

July 20 and July 22, 2005, we personally reviewed every document in every CSRT file to search for documents responsive to AP's requests that inadvertently may not have been produced. We were also assisted by an attorney at OARDEC. Because I am familiar with the documents that were produced to AP, I was able to determine by looking at the documents in the CSRT files whether those documents had or had not been produced.

9. In conducting this second review of the CSRT files, we reviewed every document in every CSRT file to determine whether it was responsive to AP's FOIA request and if so, whether it had been previously produced. As we reviewed each file, we tabbed and copied any responsive document we believed might not have been produced previously to AP. We then compared the documents we tabbed and copied to the documents that were previously produced. Through this process, we identified responsive documents pertaining to twelve detainees that were inadvertently not produced earlier. These are discussed in the following paragraphs. I understand that these documents are being provided to AP together with DOD's summary judgment reply papers.

10. Page AP 01086A. This is page sixteen of a sixteen page transcript previously produced without the sixteenth page.

11. Foreign language documents. DOD previously produced English translations of the following four documents for which it inadvertently did not produce the foreign language versions: (i) AP 03556A and AP 03556B (English version previously produced as AP 03556); (ii) AP 00443A, 00443B and 0445A (English version previously produced as AP 00443 and 00445); (iii) AP 01088A and 01088B (English version previously produced as AP 01087-88); and (iv) AP 00886A (English version previously produced as AP 00884).

12. AP 03768A. This is a handwritten note from the detainee referred to in the detainee's transcript as Exhibit D-c. Exhibits D-d and D-e referred to in this transcript are not responsive to AP's FOIA request and therefore were not produced. Exhibit D-d is a document written by the detainee's personal representative regarding a witness request by the detainee. Exhibit D-e is a classified document presented to the Tribunal by the detainee's personal representative without the detainee's involvement.

13. AP 01317F-H. This is the detainee's written answers to questions from the CSRT and a Muslim oath prepared by the detainee. I understand that Exhibit D-b, also referred to in the transcript of this detainee was provided to AP on July 22, 2005 as AP 01317A-E as noted in paragraph 5 above.

14. Transcripts not previously produced. In the course of our second search, we found four transcripts that were inadvertently not produced earlier. Three of these are Bates stamped AP 03943-52, AP 03953-58 and AP 03959. The fourth is a transcript from a reopened hearing. This is Bates-stamped AP 03652A and 03652B. The transcript for the original hearing was produced as AP 03647-51 and Exhibit D-b to the original hearing was produced as AP 3644-46.

15. AP 3290A. Fourth page of Exhibit D-b, consisting of photographs of detainee's children. The first three pages were previously produced as AP 03288-90.

Media Ground Rules for Coverage of CSRTs

16. Attached to this Declaration as Exhibit 1 is a true copy of the Media Ground Rules for Coverage of Combatant Status Review Tribunals issued by DOD (the "Ground Rules"). News organizations such as AP were not permitted to cover the CSRTs unless they agreed to abide by the Ground Rules. AP signed an acknowledgement form agreeing to abide by the Ground Rules.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 25, 2005.

Karen L. Hecker

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